

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL JEFFERSON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-1491
)	JUDGE FISCHER
ALLEGHENY COUNTY, <i>et al.</i> ,)	MAGISTRATE JUDGE CAIAZZA
)	
Defendants.)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is recommended that the Defendants' Motion for Summary Judgment be granted in part and denied in part.

II. REPORT

Michael Jefferson ("Jefferson" or "the Plaintiff"), alleges in this action that he was assaulted by guards at the Allegheny County Jail on October 19, 2003. Now before the court is Defendants' Motion for Summary Judgment. The Plaintiff has responded to the Motion and it is now ripe for disposition.

A. Legal Standard

Pursuant to Federal Rule of Civil Procedure 56(c), summary judgment is appropriate if, drawing all inferences in favor of the non-moving party, the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the movant is entitled to judgment as a matter

of law. Summary judgment may be granted against a party who fails to adduce facts sufficient to establish the existence of any element essential to that party's case, and for which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986) (party can move for summary judgment by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case"). The moving party bears the initial burden of identifying evidence that demonstrates the absence of a genuine issue of material fact. Once that burden has been met, the non-moving party must set out " . . . specific facts showing that there is a genuine issue for trial . . ." or the factual record will be taken as presented by the moving party and judgment will be entered as a matter of law. Matsushita Elec. Ind. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). An issue is genuine only if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

Here, Jefferson seeks to assert liability against the Defendants pursuant to 42 U.S.C. §1983. To state a claim a plaintiff must meet two threshold requirements. He or she must allege: 1) that the alleged misconduct was committed by a person acting under color of state law; and 2) that as a result, he or she was deprived of rights, privileges, or immunities secured by the Constitution or laws of the United States. West v. Atkins,

487 U.S. 42 (1988); Parratt v. Taylor, 451 U.S. 527, 535 (1981),
overruled in part on other grounds, Daniels v. Williams, 474 U.S.
327, 330-331 (1986).

B. Factual Record

Jefferson's sole claim is that he was subjected to the use of excessive force while incarcerated. In a declaration accompanying his response to the Motion for Summary Judgment, he describes the incident as follows:

On Sunday, October 19, 2003, at approximately Five O'Clock p.m., w[h]ile on the phone [lying on the floor] on BD-Pod [Allegheny County Jail], approximately 15-20 guards entered the Pod after a fight.

I was telling my fiancé I had to go, but before I could complete the sentence, an officer hung up on her, pushing the receiver down on the phone. As I stood up, I simply said to him "Damn that was ignorant."

The Lt. standing there said "so lock-up, all y'all". She asked me where my cell was, I told her. Then without provocation or reason, an officer grabbed my arm telling me to hurry up. I pulled away, telling him, "You ain't got to be touching my body - I'm walking, I know where to go"

As I complied with the order to return to my cell, the female Lt. (Jennings - I believe) told the officers escorting me to my cell, to "make him move faster." Suddenly the officers physically attacked me.

(Doc. 44, Ex. 2). Jefferson then describes the manner in which he was beaten repeatedly, kicked and slammed face-first into "every closed door we passed" on the way to "the hole" where he was stripped and left without clothing for "10-15 minutes." Id. He subsequently described his injuries to Lt. Jennings; he claims

that his eye was "shut," and that his ear was "messed up." Jefferson also claims that he never "swore at or made any aggressive move toward any staff" Id.

The Defendants have presented a document entitled "Material Facts Not in Dispute" which is premised upon a Misconduct Report and two Incident Reports -none of which are properly authenticated by affidavit from a records custodian or the person(s) who prepared the reports. The documents describe the Plaintiff as being uncooperative after disobeying an order; force, they claim, was used only to quell Jefferson's behavior.

C. Analysis

1. The First Amendment Claim

The Defendants assert that Jefferson has failed to allege any facts which would support claims under the First Amendment. A review of the Complaint reveals that the only allegations made in Jefferson's Complaint relate to the use of excessive force in the prison setting, which represents an Eighth Amendment claim.

"Where a particular Amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.'" Albright v. Oliver, 510 U.S. 266, 272 (1994) (quoting Graham v. Connor, 490 U.S. 386, 395 (1989))

(footnote omitted). Hence, the Motion for Summary Judgment should be granted with respect to the Plaintiff's First Amendment claim.

2. Supervisory Liability

The Defendants assert that any claims against Allegheny County, the Allegheny County Jail and the Warden must be dismissed because they are premised upon the doctrine of *respondeat superior*.

Officials may be liable under Section 1983 for the acts of those over whom they have supervisory responsibility. Supervisory liability, however, may not be premised solely upon a theory of *respondeat superior*. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir.1988). Some personal involvement must be alleged. Id. That said, supervisory liability for Section 1983 violations can be established by evidence showing that officials: participated in violating a plaintiff's rights; directed others to violate a plaintiff's rights; knew of, and acquiesced in, their subordinates' violation of a plaintiff's rights; or knew of, and tolerated, past or ongoing misbehavior. Baker v. Monroe Twp., 50 F.3d 1186, 1190-91 & n.3 (3d Cir.1995).

Moreover, a supervising public official has no affirmative constitutional duty to supervise and discipline to prevent violations of constitutional rights by his or her subordinates. Notwithstanding, when a supervising official knowingly permits a continuing custom or policy that results in harm to the

plaintiff, Section 1983 liability may attach. Colburn v. Upper Darby Township, 838 F.2d 663, 673 (3d Cir.1988), cert. denied, 489 U.S. 1065 (1989). At a minimum, such liability may be imposed "only where there are both: (1) contemporaneous knowledge of the offending incident or knowledge of a prior pattern of similar incidents, and (2) circumstances under which the supervisor's inaction could be found to have communicated a message of approval to the offending subordinate." Id.

Here, Jefferson has not pleaded or presented any facts which would support a finding of supervisory liability. He only claims that the prison is "not properly supervised" and that it is in "total disarray." (Doc. 44, ¶9). Even if the Court accepted Jefferson's argument without factual support, the general statements he provides fail to establish either contemporaneous knowledge or the communication of a message of approval. Therefore, Defendants Allegheny County, Allegheny County Jail and the Warden are entitled to summary judgment with respect to the claims made against them.

3. The John Doe Defendants

The Defendants also seek an order dismissing any John Doe Defendants from this case because the Plaintiff has failed to identify them. The Plaintiff has not respond to this part of the Defendants' argument. The Court, consequently, will grant their

Motion for Summary Judgment with respect to the John Doe Defendants.

4. Eighth Amendment Claims and Qualified Immunity

While the Eighth Amendment protects inmates against cruel and unusual punishment, it does not protect an inmate against every minimal use of force. Smith v. Mensinger, 293 F.3d 641, 648 (3d Cir.2002). Not "every malevolent touch by a prison guard gives rise to a federal cause of action." Hudson v. McMillian, 503 U.S. 1,9, (1992) (citing Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir.1973)) ("Not every push or shove, even if it may later seem unnecessary . . . violates a prisoner's constitutional rights").

In an Eighth Amendment excessive force claim, summary judgment in favor of a defendant is appropriate where the evidence, viewed in the light most favorable to the plaintiff, does not support "a reliable inference of wantonness in the infliction of pain." Thomas v. Ferguson, 361 F.Supp.2d 43, 438 (N.J.2004) (quoting Whitley v. Albers, 475 U.S. 312, 322 (1986)). The central inquiry is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Mensinger, 293 F.3d at 649 (quoting Brooks v. Kyler, 204 F.3d 102, 106 (3d Cir.2000)). "When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated . . .

whether or not significant injury is evident." Brooks v. Kyler, 204 F.3d 102, 108-109 (3d Cir.2000).

The Court has already noted that the evidence presented by the Defendants is not supported by appropriate affidavits. Even if the Court were to accept the reports provided by the Defendants in support of their Motion, they would serve only to set up a material dispute of fact when juxtaposed with the Plaintiff's submissions.

The Plaintiff has provided, both in his sworn complaint and his declaration, his own testimony in which he claims that Officer Slaby, the only named Defendant remaining in this case, "savagely beat, punched, kicked, strangled, and assaulted" the Plaintiff. (Doc. 6, at 2). Further, the Plaintiff states that Slaby escorted him to his holding cell at which time his head was slammed into open doors - even though the Plaintiff was purportedly compliant with the guard's orders. This evidence is sufficient to allow the Plaintiff's Eighth Amendment claim to survive summary judgment.

For the same reasons, the Court cannot grant summary judgment with respect to the Defendants qualified immunity claim. If the incident occurred according to the Plaintiff's version - an issue reserved for the fact-finder - Officer Slaby could not have reasonably believed his actions to be consistent with the Eighth Amendment's prohibition against the use of wanton and


malicious force. E.g., Anderson v. Creighton, 483 U.S. 635 (1987) (government officials are shielded from civil liability only if their actions could reasonably have been thought consistent with the rights they are alleged to have violated.); Wilson v. Layne, 526 U.S. 603 (1999) (Court must inquire "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted"). On this issue, the Plaintiff has established a material dispute of fact.

III. CONCLUSION

It is respectfully recommended that the Defendants' Motion for Summary Judgment be granted in part and denied in part, consistent with the provisions of this Report and Recommendation. In sum, the only claim remaining is the Plaintiff's allegation that Defendant Slaby used excessive force on October 19, 2003, during an altercation at the Allegheny County Jail.

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, objections to this Report and Recommendation are due by November 19, 2007. Responses are due November 29, 2007. Failure to file timely objections may constitute a waiver of any appellate rights.

November 1, 2007


Francis X. Caiazza
United States Magistrate Judge

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